

REMARKS

Applicants cancel, without prejudice, claims 23, 25 and 29. Applicants reserve the right to prosecute claims with identical or similar scope in one or more future continuation or divisional applications.

Claim 19 has been amended to recite a synovial sample and that the antibody binds to a protein having the amino acid sequence of SEQ ID NO:2 (DC-SIGN). The claim amendments are fully supported by the specification. In particular, support for the amendments to claim 19 can be found, for example, at paragraphs 28 and 52 of the published application.

Applicants' cancellation of and amendments to the claims are not in acquiescence to any of the Examiner's rejections. Applicants reserve the right to further prosecute the same or similar claims in the instant application or in one or more subsequent patent applications claiming priority to the instant application.

Upon entry of the amendments, claims 19, 21, 24, 26-28 and 30 will be pending. No new matter has been introduced. Applicants respectfully request reconsideration in view of the following remarks. Issues raised by the Examiner will be addressed below in the order they appear in the outstanding Office Action.

DETAILED ACTION

Withdrawn Objections and/or Rejections

Applicants note with appreciation that the previous rejection of claims 33-41 under 35 U.S.C. 112, first paragraph, written description, has been withdrawn.

Applicants note with appreciation that the rejection of claim 19 and 22-41 under 35 U.S.C. 112, first paragraph, enablement, has been withdrawn.

Applicants note with appreciation that the rejection of claim 26 and 39 under 35 U.S.C. 112, second paragraph, has been withdrawn.

Applicants note with appreciation that the Sequence Listing submitted on May 6, 2009 has been received by the office.

Claim Rejections – 35 U.S.C. 112, First Paragraph, Enablement

Claims 19, 21, 24, 25 and 29-30 are rejected under 35 U.S.C. 112, first paragraph, for allegedly failing to enable one of skill in the art to practice the claimed invention. Specifically, the Examiner states that the specification does not reasonably provide enablement for a method for enriching the percentage of macrophages in a sample of cells using an antibody that binds to DC-SIGN.

Applicants disagree. Nonetheless, solely to expedite prosecution, applicants have amended claim 19 and canceled claims 25 and 29. Claim 19, as amended, is now directed to a method for enriching the percentage of macrophages in a synovial sample using an antibody that binds to a protein having the amino acid sequence of SEQ ID NO:2 (DC-SIGN), or an antigen-binding fragment of said antibody. The Examiner has acknowledged at page 3 of the Office Action that the specification is “enabling for a method for enriching the percentage of macrophages in a synovial sample of cells using an antibody that binds to the DC-SIGN protein that has the amino acid sequence of SEQ ID NO: 2.” Therefore, claims 19, 21, 24 and 30, as amended, are enabled.

Reconsideration and withdrawal of this rejection are requested.

Claim Rejections – 35 U.S.C. 112, Second Paragraph

Claims 19, 21 and 23-30 are rejected under 35 U.S.C. 112, second paragraph, for allegedly being indefinite. Specifically, the Examiner alleges that the acronym "DC-SIGN" is arbitrary without definitive structure. The Examiner states that applicants should particularly point out and

distinctly claim the DC-SIGN protein by claiming characteristics associated with the protein, such as a sequence identifier.

Applicants respectfully traverse and contend that the rejection is moot in view of the amended claims. Claims 23, 25 and 29 have been canceled. Claim 19 has been amended to replace "DC-SIGN" with "the amino acid sequence of SEQ ID NO:2 (DC-SIGN)." Support for the amendment can be found, e.g., at paragraph 52 of the published application.

Reconsideration and withdrawal of this rejection are requested.

Claim Objections

Claim 25 is objected to as allegedly being of improper dependent form for failing to further limit the subject matter of a previous claim. Specifically, the Examiner alleges that the phrase "wherein said macrophages express CD68" does not further limit the macrophages in claim 19 because DC-SIGN positive macrophages express CD68.

Applicants disagree. The specification at page 17 discloses that there is a strong correlation between CD68 and DC-SIGN expression, but does not state that all DC-SIGN positive macrophages express CD68. Nonetheless, solely to expedite prosecution, applicants have canceled claim 25 rendering the rejection moot.

CONCLUSION

In view of the above amendments, Applicants believe the pending application is in condition for allowance. The Examiner is invited to telephone the undersigned to discuss any issue pertaining to this response. Applicants request favorable consideration of the application and early allowance of the pending claims.

Applicants believe no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 18-1945, under Order No. ALXN-P01-095 from which the undersigned is authorized to draw.

Dated: August 26, 2009

Respectfully submitted,

By /Ryan Murphey/
Ryan Murphey, Ph.D.
Registration No.: 61,156
ROPES & GRAY LLP
One International Place
Boston, Massachusetts 02110-2624
(617) 951-7000
(617) 951-7050 (Fax)
Attorneys/Agents For Applicant